



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

June 3, 2022

Stuart Gillespie  
Staff Attorney, Earthjustice  
633 17<sup>th</sup> Street, Suite 1600  
Denver, CO 80202

Dear Mr. Gillespie:

I am responding to your March 9, 2022, and March 23, 2022, letters concerning the Rosemont Copper Mine (Rosemont) approved jurisdictional determinations (AJDs). Specifically, you provide that the Tohono O'odham Nation, Pascua Yaqui Tribe, and Hopi Tribe (Tribes) request the U.S. Army Corps of Engineers (Corps) rescind the Rosemont AJDs, conduct a new delineation of the waters on the mine site, and engage in meaningful consultation with the Tribes during the process. These requests are being asked as a result of what you have identified as new information including that the AJDs were based on application of the vacated Navigable Waters Protection Rule, technical errors identified by the Environmental Protection Agency (EPA), and that the AJDs were finalized without adequate coordination with EPA or formal consultation with the Tribes. In your most recent letter you also indicated that you believe the Rosemont project proponent may initiate construction soon. An identical letter is being sent to the other signatory of your letter, Caitlin Miller.

I can assure you that I take all of the Tribes' concerns regarding the validity and accuracy of the AJDs and, importantly, regarding Tribal consultation seriously. Today, I provided a memorandum to Corps leadership regarding the Rosemont AJDs. In the memorandum, I directed the Corps to notify the AJD recipient that they cannot rely on those AJDs to accurately delineate currently jurisdictional waters. I also provided that the Navigable Waters Protection Rule AJDs issued for the Rosemont parcel are not valid as a result of a lack of government-to-government consultation on the AJDs as had been requested by the Tribes. The Tribal consultation request should have been honored, particularly in light of the Federal government's trust responsibility to Tribal Nations as highlighted in President Biden's January 26, 2021, memorandum entitled Tribal Consultation and Strengthening Nation-to-Nation Relationships. If the Rosemont project proponents choose to request a new AJD, any newly issued AJD must follow the applicable regulatory regime defining "waters of the U.S." at time of AJD issuance, which is currently the pre-2015 regulatory regime. In addition, if a new AJD is requested, the Corps will also extend consultation requests to the Tribes prior to issuing any new AJD.

I have discussed the subject with EPA and will continue to coordinate with them on this subject. I also note that if the Rosemont project proponent proceeds with

discharges into jurisdictional waters of the United States without appropriate authorization they may be in violation of the Clean Water Act.

I also recommend you continue to engage with the Corps District office in Los Angeles to discuss your concerns, in particular regarding any information you may have regarding activities currently being undertaken by the AJD recipient on the Rosemont parcel as well as information to help inform any future determination of jurisdiction of waters present on the site.

Thank you for your interest in the Civil Works program.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Connor", with a stylized flourish at the end.

Michael L. Connor  
Assistant Secretary of the Army  
(Civil Works)